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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,284	11/18/2003	Steluta Gina Butuc	PENRECO US 3	6055
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ARTHUR M DULA LAW OFFICE OF ARTHUR M DULA 3106 BEAUCHAMP STREET HOUSTON, TX 77009			EXAMINER LANDAU, SHARMILA GOLLAMUDI	
			ART UNIT	PAPER NUMBER
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			01/14/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/716,284

Applicant(s)

BUTUC, STELUTA GINA

Examiner

Sharmila Gollamudi Landau

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11, 13, 25, 26 and 28-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13, 25-26, 28-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 1616

### **DETAILED ACTION**

Receipt of the Amendments/Remarks filed 10/31/07 and Terminal Disclaimers filed 7/30/07 is acknowledged. Claims 1-11, 13, 25-26, 28-34 are pending in this application.

#### ***Claim Rejections - 35 USC § 112***

The rejection of claims 26-33 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention is withdrawn in light of applicant's amendments filed 10/31/07.

#### ***Double Patenting***

The rejection of claims 1-7, 10, 25-26, and 28-33 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-10 of copending Application No. 11/343796 is withdrawn.

The terminal disclaimer filed on 7/30/07 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 11/343796 has been reviewed and is accepted. The terminal disclaimer has been recorded.

The rejection of claims 1-7, 25, 29-31 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims of U.S. Patent No. 6881776 is withdrawn.

The terminal disclaimer filed on 7/30/07 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 6881776 has been reviewed and is accepted. The terminal disclaimer has been recorded.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1-10, 25-26, and 28-34 are rejected under 35 U.S.C. 102(b) as being anticipated by DesLauriers et al (5,221,534).**

DesLauriers et al disclose hydrocarbon oil gels comprising diblock or triblock copolymers and a hydrocarbon oil. see abstract. The hydrocarbon oil may be selected from paraffinic oil, a naphthenic oil, and mineral oil. see column 6, lines 30-35. The composition preferably comprises 2-6% of the polymer and 94-98% of the hydrocarbon oil. see column 7, lines 45-50. Further solvents including isopropyl myristate, isopropyl palmitate, and organic esters, are used to dilute the gel when the gel is formulated into a cosmetic composition. see column 6, lines 35-45. Table 12 discloses adding a benzoate ester additive to the gel composition. Table 5 discloses the combination of a diblock copolymer with a triblock copolymer (reads on secondary gelling agent).

With regard to claim 7, the diblock is in the instant weight percent and has the instant molecular weight and thus the composition will be capable of the functional limitation recited in claim 7.

With regard to claim 8, Kraton 1702 has the instant molecular weight.

With regard to claims 9 and 18, it is the examiner's position that the liquid gel has the same viscosity as claimed since the diblock copolymer and hydrocarbon are in the same weight percent.

With regard to claims 26 and 28-34, example 6 discloses a composition comprising 10% white oil (refined mineral oil), 3% Kraton 1702, and 87% Drakeol 5 (mineral oil). Therefore, the 10% white oil and 3% Kraton 1702 read on the pseudoplastic thickener in a hydrocarbon base of Drakeol wherein the white oil is contained in an amount of about 77% and the diblock is in an amount of about 23%. The copolymer is the gelling agent and thus the composition is in a gel form. Also note table 7 discloses a white mineral oil gel comprising 10% Kraton 1701 and 90% Drakeol 5. Claim 31 is directed to the intended use of the product and since it does not impart a structural limitation, the intended use is not given patentable weight.

#### ***Response to Arguments***

Applicant's arguments filed 10/31/07 have been fully considered but they are not persuasive. Applicant argues that the DesLauriers patent teaches using a combination of diblock or multiblock copolymers and that instant invention discloses the use of only a diblock polymer. This argument is not persuasive since instant claim language "comprising" does not exclude the triblock copolymer disclosed in DesLauriers.

Applicant argues that adding a triblock or multiblock copolymer to the instant composition will cause it to lose its shear-thinning qualities and omission of a triblock copolymer to produce a shear thinning composition is not taught in the DesLauriers patent. This argument is not persuasive. The terms, diblock and triblock polymers is a generic expression encompassing multitudes of copolymers which are structurally different and applicant has not shown that the

Art Unit: 1616

addition of any triblock or multiblock (the reference even teaches radial polymer) copolymer to a diblock copolymer will cause it to lose its qualities. Secondly, applicant has not provided any evidence or data to support applicant's argument and therefore, deemed to be speculative nature. Note MPEP 716.01(c): The arguments of counsel cannot take the place of evidence in the record. In re Schulze, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965). Regarding new claim 34, the reference teaches mineral oil and thus the rejection is applicable to the newly added claim 34.

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1-11, 13, and 25-34 are rejected under 35 U.S.C. 102(a) and (e) as being anticipated by Allison et al (2002/0116867).**

Allison et al disclose a transparent composition comprising 1) a liquid hydrocarbon oil, 2) at least one copolymer selected from a triblock or diblock, or a combination thereof, and 3) at least one derivative of an N-acyl amino acid. See claim 1. The hydrocarbon oil is a mineral oil and utilizes in the amount of 79-91%. See 009-0030 and claim 2-4. Allison teaches when the at least one copolymer is a diblock copolymer, a preferred copolymer is Kraton G-1702 and 1701. See 0036. The copolymer is utilized in an amount of 5-35%, preferably 9-15; and most preferably 5-10%. See 0047 and claim 11-15. The N-acyl amino acid is N-lauroyl-glutamic acid diethyl amide used in an amount of 0.05-2% and preferably 0.1-0.3%. See column [0051] and claims 19-18.

With regard to claim 7, the diblock is in the instant weight percent and has the instant molecular weight and thus the composition will be capable of the functional limitation recited in claim 7.

With regard to claim 8, Kraton 1702 has the instant molecular weight.

With regard to claims 9 and 18, it is the examiner's position that the liquid gel has the same viscosity as claimed since the diblock copolymer and hydrocarbon are in the same weight percent.

With regard to claims 26 and 28-34, Allison meets the interpretation that claim 26 is further limiting the pseudoplastic thickener to a diblock copolymer and the hydrocarbon base to a hydrocarbon oil. Claim 31 is directed to the intended use of the product and since it does not impart a structural limitation, the intended use is not given patentable weight.

#### ***Response to Arguments***

Applicant's arguments filed 10/31/07 have been fully considered but they are not persuasive. Applicant's only argument is that Allison teaches the use of at least one derivative of N-acyl amino acid and that applicant has canceled claim 27 to eliminate the claim of an n-acyl amino acid. However, since the rejection is applicable to all the claims and since applicant provides no specific arguments, the rejection is maintained. Regarding new claim 34, the reference teaches mineral oil and thus the rejection is applicable to the newly added claim 34.

**Claims 1-10, 25-26, 28-34 are rejected under 35 U.S.C. 102(e) as being anticipated by Morrison et al (6,433,068).**

Morrison discloses a mineral oil gel comprising 30% titanium dioxide, 3% Kraton 1702, 0.15% Kraton 1650, and 66.85% Drakeol 7 (mineral oil). See example 2. Example 1 discloses a

Art Unit: 1616

mineral oil gel based on 8.30% Kraton 1702 (diblock), 0.40% Kraton 1650, and Drakeol 7-mineral oil (91.3%).

With regard to claim 7, the diblock is in the instant weight percent and has the instant molecular weight and thus the composition will be capable of the functional limitation recited in claim 7.

With regard to claim 8, Kraton 1702 has the instant molecular weight.

With regard to claims 9 and 18, it is the examiner's position that the liquid gel has the same viscosity as claimed since the diblock copolymer and hydrocarbon are in the same weight percent.

With regard to claims 26 and 28-34, both hydrocarbon base and hydrocarbon oil may be a mineral oil (note dependent claim) and thus Morrison reads on the instant claims. Claim 31 is directed to the intended use of the product and since it does not impart a structural limitation, the intended use is not given patentable weight.

### ***Response to Arguments***

Applicant's arguments filed 10/31/07 have been fully considered but they are not persuasive. Applicant argues that Morrison requires both Kraton 1702, a diblock copolymer, and Kraton 1650, a triblock copolymer and as argued regarding the DesLauriers patent, the combination of a diblock and triblock copolymer eliminates the shear-thinning quality of the composition. Applicant argues that Morrison does not disclose the elimination of a triblock copolymer in order to increase the shear-thinning characteristics as disclosed in instant invention.

These arguments are similar to those raised for DesLauriers and therefore, the examiner's response to DesLauriers is incorporated herein. Again, the examiner points out that the instant



Art Unit: 1616

claim language “comprising” does not exclude the triblock copolymer disclosed in Morrison.

Further, the terms diblock and triblock polymers is a generic expression encompassing multitudes of copolymers which are structurally different and applicant has not shown that the addition of any triblock or multiblock (the reference even teaches radial polymer) copolymer to a diblock copolymer will cause it to lose its qualities. Secondly, applicant has not provided any evidence or data to support applicant’s argument and therefore, deemed to be speculative nature.

Note MPEP 716.01(c): The arguments of counsel cannot take the place of evidence in the record.

In re Schulze, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965). Moreover, applicant is incorrect in stating that Morrison teaches only the combination. The statements by Morrison on col. 2, lines 49-54 clearly indicate the use of diblock alone or a blend with other copolymers.

Regarding new claim 34, the reference teaches mineral oil and thus the rejection is applicable to the newly added claim 34.

### *Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,


Art Unit: 1616

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharmila Gollamudi Landau whose telephone number is 571-272-0614. The examiner can normally be reached on M-F (8:00-5:30), alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Sharmila Gollamudi Landau  
Primary Examiner  
Art Unit 1616

SGL  
1/9/07